

REMARKS

Summary

Claims 1, 3, 4, 6, 7, 9-11, 13, 14, 16, and 18-38 stand in this application. Claims 1, 4, 6, 10, 13, 16, 18, 29, 32, and 38 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

35 U.S.C. § 103

At page 2, paragraph 3 claims 1, 3, 4, 6, 7, 9-11, 18, 19, 21-25, 27, 29, 30, 31, and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,631,141 to Kumar et al. ("Kumar") in view of US 5,959,968 to Chin et al. ("Chin") and US Pg Pub 2004/0068686 to Palm ("Palm"). At page 12, paragraph 4 claims 13, 14, 16, and 32-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kumar in view of Chin, Palm and US 7,308,612 to Bishara ("Bishara"). Applicant respectfully traverses the rejections, and requests reconsideration and withdrawal of the obviousness rejections.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success

must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 3, 4, 6, 7, 9-11, 18, 19, 21-25, 27, 29, 30, 31, and 38. Therefore claims 1, 3, 4, 6, 7, 9-11, 18, 19, 21-25, 27, 29, 30, 31, and 38 define over the cited references whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

sending a first message including an aggregation discovery code from a first node to a second node, the second node including a readable and writable remote discovery register, wherein the first message comprises a capabilities list+request (CLR) message;

At least this language is not disclosed by Kumar, Chin or Palm, whether taken alone or in combination.

Applicant respectfully submits that Kumar fails to disclose the missing language of the claimed subject matter. For example, Kumar at col. 6 lines 24-29, in relevant part, teaches extracting a "System ID" and "remote port key values" from a message. By way of contrast, the claimed subject matter claims a second node including a readable and writable remote discovery register. Previously in Kumar it is taught that the "System ID" and "remote port key values" are set before the aggregation procedure is run. See, for example, col. 5 lines 27-28, which state "FIG. 1 illustrates the interconnection of an exemplary network before aggregation." Figure 1 of Kumar already contains the

“System ID” and “remote port key values” for the exemplary network. Therefore, no readable and writeable remote discovery register is involved as neither of these identifiers are modified within the scope of the procedure. Therefore, Kumar fails to disclose, teach or suggest the missing language.

Applicant respectfully submits that Chin also fails to disclose the missing language of the claimed subject matter. The Office Action makes reference to the remote discovery register when it states “Chin teaches comparing a value of the remote discovery register to the aggregation discovery code,” specifically referencing col. 15 line 43-63. Applicant respectfully submits that Chin fails to disclose the missing language of the claimed subject matter. For example, Chin at the given cite, in relevant part, teaches comparing the group values of various ports so as to not aggregate ports belonging to different ports. However, these port values are stored in a local table, as shown in Figure 4 of Chin, not a readable and writeable remote discovery register. The Office Action goes on to state that “the device ID and port ID are transmitted in the aggregation message. These IDs are then compared against the state of the port aggregation stored in the table.” The device ID and port ID, as with Kumar, are calculated before the aggregation procedure has begun. Therefore, no readable and writeable remote discovery register is involved. Therefore, Chin fails to disclose, teach, or suggest the missing language.

For at least these reasons, Applicant submits that claim 1 is patentable over the cited references, whether taken alone or in combination. In addition, claims 4, 6, 10, 13, 16, 18, 29, 32, and 38 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 4, 6, 10, 13, 16, 18, 29, 32, and 38 are not

obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 1, 4, 6, 10, 13, 16, 18, 29, 32, and 38. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 3, 7, 9, 11, 14, 19-28, 30, 31, and 33-38 that depend from claims 1, 4, 6, 10, 13, 16, 18, 29, 32, and 38, and therefore contain additional features that further distinguish these claims from the cited references.

Conclusion

For at least the above reasons, Applicant submits that claims 1, 3, 4, 6, 7, 9-11, 13, 14, 16, and 18-38 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to

be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1, 3, 4, 6, 7, 9-11, 13, 14, 16, and 18-38 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the credit card in the previously filed credit card authorization form.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: May 22, 2009

KACVINSKY LLC
C/O Intellevate
P.O. Box 52050
Minneapolis, MN 55402
(724) 933-9338